



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33135347

Date: SEP. 04, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a movie, television, and theatre director, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the record did not establish that he met the initial requirements for this classification through evidence of either a major, internationally recognized award or meeting at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with our discussion below.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria

listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual’s occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner asserted that he was one of the most prominent directors in Georgia, directing several nationally renowned theatrical, television and film productions. The Petitioner indicated that he has a “notorious reputation” in Georgia and that his work has been displayed in numerous theatres and stages throughout the country and that he has played a critical role for distinguished organizations within the country, including leading television networks and theatres. The Petitioner also stated that he was admitted as an honorary member of the Georgian Film Academy.

Because the Petitioner did not indicate or show that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied seven of these criteria, relating to the receipt of lesser nationally or internationally recognized prizes or awards; membership in associations in the field requiring outstanding achievement; published material about him in major trade publications or major media; participation as a judge of the work of others; display of his work at artistic exhibitions or showcases; performance in a leading or critical role for organizations or establishments with a distinguished reputation; and command of a high salary. The Director concluded that the Petitioner did not meet any of these criteria. On appeal, the Petitioner asserts that he meets all seven claimed criteria, and that the Director therefore should have proceeded to a final merits determination.

Upon review of the record, the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ii) relating to membership in an association in the field for which classification is sought requiring outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The Petitioner submitted documentation reflecting that the Beneficiary was admitted as an honorary member of the Georgian Film Academy in [] including a letter from the organization’s vice president discussing his induction and accomplishments in the Georgian film industry. The Petitioner also provided the bylaws of the Georgian Film Academy indicating in article 3.2 that honorary members, a membership level above regular members, are selected based on a career “so distinguished from the others that his or her work has historical significance for Georgia and his or her achievements go beyond film industry” as well as “universal recognition and exceptional

sympathy of the audience.¹” Article 3.3 further reflected that members are selected by members of the board of the Georgia Film Academy including “Georgia’s most successful directors, actors, film critics and art critics.” In concluding that the Petitioner did not meet this criterion, the Director listed the evidence submitted and concluded that the “evidence provided does not establish the plain language of this criterion,” providing no specific analysis of this evidence.

Upon review, we disagree with the Director and conclude that the Petitioner has met the plain language of this criterion. The Petitioner is a director in film, television and theatre; therefore, the Georgian Film Academy is within the field of the classification sought. Further, the requirements for honorary membership indicate a level of accomplishment commensurate with outstanding achievement, or a career “so distinguished from the others that his or her work has historical significance for Georgia and his or her achievements go beyond film industry” along with “extraordinary success.” The provided bylaws also reflect that the Petitioner’s selection was more likely than not made by national experts in his field. As such, we conclude that the Petitioner has met the plain language of this criterion.

In addition, we also determine that the Petitioner satisfied the criterion requiring evidence of the display of his “work in the field at artistic exhibitions or showcases.” 8 C.F.R. § 204.5(h)(3)(vii). The Petitioner submitted substantial evidence reflecting his involvement in the direction of numerous musicals in Georgia including several foreign language versions of [REDACTED] [REDACTED] at the [REDACTED] Theater, [REDACTED] Festival, [REDACTED] Theater, and the [REDACTED] Theater, among others. We conclude that his direction of these several performances meets the plain language of this criterion.

Likewise, the Petitioner’s career as a director further satisfies the criterion related to having performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii). As discussed above, the Petitioner was engaged in directing numerous musicals at leading theatres within Georgia, including the [REDACTED] Theater and the [REDACTED] Theater. He further provided sufficient evidence to substantiate the distinguished reputation of these theatres within the country, including documentation reflecting these performances and letters from the management of these theaters discussing his leading roles. In addition, the Petitioner provided supporting documentation and letters indicating that he was engaged as a director and producer for [REDACTED] a leading television station in Georgia, most notably producing and directing a popular television show on that channel, [REDACTED]. Thus, we conclude that the Petitioner has provided sufficient evidence to demonstrate that he more likely than not performed in a leading and critical role for organizations or establishments with a distinguished reputation.

The Petitioner has, therefore, overcome the stated grounds for denial of the petition. Nevertheless, the record does not support approval of the petition. Granting the initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks. The Director must undertake a final merits determination to analyze the Petitioner’s accomplishments and weigh the totality of the evidence to determine if they show sustained national or international acclaim and demonstrate that

¹ This same article within the bylaws also indicated that regular members are selected based on making “a significant contribution in the development of the film and whole industry during his or her career and that the applicant also achieved most extraordinary success setting apart from the other candidates.”

he is among the small percentage at the very top of his field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

III. CONCLUSION

Because the Petitioner has overcome the stated grounds for denial, we remand this proceeding so that the Director can render a final merits determination in keeping with the *Kazarian* framework.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.